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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 30 2010

SRC 09 093 51265

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Marie Pleuson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), a member of the professions holding an advanced degree. The petitioner seeks employment as a curriculum coordinator, English as a second language. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as a member of the professions holding an advanced degree and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner holds a "Título de Licenciado" issued in 2001, evaluated as the equivalent of a Bachelor's Degree in Education. The petitioner also submitted her curriculum vitae listing experience as a distribution manager for [redacted] from 1992 through 2002 and as a distribution manager for [redacted] from 2002 through 2007. This is the same experience listed on the uncertified ETA Form 9089 completed by the petitioner.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Moreover, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience "shall be in the form of letter(s)" from current or former employers. The petitioner provided no evidence of her experience beyond her self-serving curriculum vitae and the uncertified ETA Form 9089 completed by the petitioner.

Regardless, being a member of the professions does not entitle the alien to classification as a professional if she does not seek to continue working in that profession. *See Matter of Shah,* 17 I&N Dec. 244, 246-47 (Reg'l. Comm'r. 1977). The petitioner in this matter seeks to work as a curriculum coordinator and, thus, must demonstrate that she is an advanced degree member of this profession. Moreover, as stated above, the regulation at 8 C.F.R. § 204.5(k)(2) provides that five years of progressive post-baccalaureate experience "in the specialty" is equivalent to an advanced degree. In light of the above, the petitioner's experience in an unrelated specialty, distribution management, cannot be combined with her baccalaureate to establish that she holds an advanced degree.

On appeal, the petitioner submitted employment letters confirming her experience overseeing the manufacturing process of clothing at [redacted] In addition, [redacted] the petitioner's husband, provided a letter affirming that [redacted] was the petitioner's own clothing manufacturing business. [redacted] asserts:

> [The petitioner] used her university education in the field of curriculum and teaching to her work experience in clothing manufacture to develop her own business. She developed a curriculum to educate employees about the manufacturing processes in the fashion industry and about business practices. She wrote materials to instruct her employees in office procedures and in effective communication with customers. As a business owner and manager, she had full responsibility for the educational levels of her employees and developed instructional materials so that they could learn to do their jobs well.

The record does not explain how developing occupational training manuals for clothing manufacturing employees incidental to running a manufacturing business constitutes the same specialty as working as a developer of course curriculum materials for English as a second language.

Finally, the petitioner submitted a letter from [redacted] of the Euro-Brazil Regional Professional Technical Center asserting that the petitioner spent two months at the center "as a professor of fashion manufacture." [redacted] provides the petitioner's duties, none of which include curriculum coordination for teaching English as a second language. Regardless, his letter only affirms two months of employment. Finally, [redacted] asserts that the petitioner worked for five months teaching at the SENAI National Service for Industrial Learning of Apurcarana. Specifically, she covered topics in measurement, patterns, cutting, mounting, fitting and finalizing and analyzing the finished product. Once again these duties are unrelated to developing a curriculum for teaching English as a second language and, even combined with her experience with the Euro-Brazil Regional Professional Technical Center, do not amount to five years of progressive post-baccalaureate experience in the specialty of curriculum coordinator.

As the petitioner has not documented five years of post-baccalaureate progressive experience in the field of educational curriculum coordinator rather than incidental duties preparing employee occupational training manuals, we affirm the director's conclusion that the petitioner has not demonstrated that she is a member of the professions holding an advanced degree.

The petitioner has never claimed to qualify as an alien of exceptional ability and the director did not consider this classification. In the interest of thoroughness, the AAO will now consider the evidence under the provisions for that classification. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) provides that the petitioner must submit evidence that qualifies under at least three of the following categories:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought
>
> (C) A license to practice the profession or certification for a particular profession or occupation
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability
>
> (E) Evidence of membership in professional associations
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

Where the petitioner fails to submit the requisite evidence, the proper conclusion is that the petitioner failed to satisfy the regulatory requirement of three types of evidence. *See Kazarian v. USCIS*, 2010 WL 725317, *6 (9th Cir. March 4, 2010) (a decision pertaining to section 203(b)(1)(A) of the Act but containing legal reasoning pertinent to the classification in the current matter before us). If the petitioner has submitted the requisite evidence, U.S. Citizenship and Immigration Services (USCIS) makes a final merits determination as to whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2); *see also Kazarian, 2010 WL 725317* at *3, *6. Only aliens whose achievements have garnered "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2); *see also Kazarian,* 2010 WL 725317 at *3.

As discussed above, the petitioner's experience is not "in the occupation" for which she claims exceptional ability. Thus, the only category of evidence for which the petitioner has submitted evidence is her degree under 8 C.F.R. § 204.5(k)(3)(ii)(A). Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. As the only category of evidence submitted by the petitioner is her degree, she cannot qualify for classification as an alien of exceptional ability. Even if we considered her experience in a different occupation under our final merits determination, we are not persuaded that ten years of experience overseeing clothing manufacture, with its incidental duties of preparing occupational training manuals, is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered among curriculum coordinators who actually work in that occupation. In light of the above, the petitioner has not established that she is an alien of exceptional ability.

As the petitioner has not demonstrated that she is an advanced degree professional or an alien of exceptional ability, the issue of whether the alien employment certification process should be waived in the national interest is moot. Nevertheless, in the interest of thoroughness, we will examine that issue.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national

> benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The addendum to the Form I-140 petition provides the following job duties:

> Coordinate curriculum, course plans and methods of instruction for English as a second language for the Permanent Resident Aliens and Citizens of Brazilian background in the US. Courses to be distributed and implemented in the Brazilian-American community around the United States.

The job location listed on the uncertified ETA Form 9089, Part H, is the Friendly Hand Ministry of Assembly of God. The record contains no evidence that this church is a distributor of English as a second language or other curricula and does not include a business plan explaining how the church intends to become a distributor of such materials. We must stress that unproven, untested ideas cannot be presumed to have substantial intrinsic merit. Rather, the substantial intrinsic merit must be documented.

The director concluded that while the general field of curriculum coordination may have substantial intrinsic merit, the petitioner had not demonstrated that her activities in this field would have substantial intrinsic merit. On appeal, counsel asserts that English as a second language is vital to improving education for immigrant families. Counsel references the attached curriculum and concludes that it will "facilitate learning." At the end of his brief, however, counsel asserts that the curriculum being submitted represents "the kinds of curriculum materials to e developed and implemented by the alien." Thus, it is not clear that the materials submitted on appeal represent curriculum developed by the petitioner. Notably, much of the materials bear the logo for

www.smartkids.com.br. The conversational materials, while bearing no website identifier, appear to contain "links" that suggest these materials also derive from the Internet.[1] The record contains no evidence that the petitioner is the developer of the materials on any website. If these materials are being presented as the type of useful curricula that the petitioner will develop, it is not clear how the existence of materials on the Internet that, according to counsel, "appeal to a wide audience throughout the United States," demonstrate that the development of new curricula at a local church is of substantial intrinsic merit.

As the record does not suggest that the petitioner has any experience developing a curriculum for learning a new language, it would appear that the prospective duties discussed above were devised as a pretext to support a national interest waiver petition. As with job requirements, job duties with no good reason other than to justify the requirements for an immigration benefit are not always persuasive. *Cf. Defensor v. Meissner,* 201 F. 3d 384, 387 (5th Cir. 2000). Finally, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. (D.C. Dist. 1990). In light of the above, the petitioner has not demonstrated that there is substantial intrinsic merit in developing new English language curricula for Portuguese speakers by an individual operating out of a local church with no experience teaching English as a second language or developing curricula for such a course.

The director further concluded that the benefit would not be imparted on a national scale. On appeal, counsel asserts that the Brazilian population residing in the United States is spread out across the country. Once again, counsel asserts that the enclosed materials demonstrate the scope and appeal to a wide audience. We reiterate, however, that the materials submitted on appeal are not claimed to have been developed by the petitioner and, in fact, include the logo of a website that has not been shown to be affiliated with the petitioner.

NYSDOT, 22 I&N Dec. at 217, n.3, provides several examples of occupations that fall within nationally important areas, such as services for the underrepresented, education and nutrition, but provide negligible impact at the national level. Significantly, it is not enough to conceive of a means whereby the petitioner's work could eventually have a national impact. To hold otherwise would render the national scope requirement meaningless. Rather, the petitioner must demonstrate that the proposed employment is within a framework that typically has such an impact, such as the alien in *NYSDOT*, who worked on the proper maintenance of bridges and roads already connected to the national transportation system. 22 I&N Dec. at 217. As stated above, the petitioner proposes to work at a

[1] Much of the conversational materials included in the curriculum submitted on appeal are from [redacted] accessed April 1, 2010 and incorporated into the record of proceedings. The record contains no evidence that the petitioner is the developer of the materials on this website.

local church with no documented history of disseminating curricula nationwide. Moreover, even if we considered the petitioner's history of developing occupational training materials, those materials had a purely local benefit for her employees. In light of the above, we uphold the director's finding that the petitioner has not demonstrated that the benefits of her work would be national in scope.

Finally, it remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The director concluded that the petitioner had not demonstrated that she possesses qualities and attributes that are not amenable to enumeration on an application for alien employment certification and that she had not demonstrated her prior achievements that justify projections of future benefits to the United States. On appeal, counsel states that the petitioner has a "history of developing educational materials for Brazilian workers in a vocational setting. There is every reason to expect her to continue to be both creative and productive in the high quality of curriculum development to serve the Brazilian population." Counsel further asserts that language proficiency is "aimed at the workplace to enable the foreign-born worker to advance." Counsel concludes that the proposed employment "cannot be held by a person with less education, training or experience because such a person cannot perform the job duties requiring practical experience with Portuguese speaking learners in vocational settings."

While counsel asserts that an individual with *less* education, training or experience could not perform the job, counsel misstates the relevant inquiry. Specifically, as stated above, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the *same* minimum qualifications. *NYSDOT,* 22 I&N Dec. at 217-18.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

If USCIS were to accept that the petitioner's bilingual ability warrants approval of the waiver, USCIS would need to approve the waiver for every alien from a non-English speaking country who proposes to develop English as a second language curricula. The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all bilingual aliens intending to provide materials for teaching English as a second language.

Moreover, the petitioner's experience providing vocational training is not persuasive. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she

seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case by case basis. *Id.* at 221, n. 7.

The only educational materials in the record appear to be downloaded from the Internet and cobbled together. The record does not establish that these materials were developed by the petitioner or that they have been influential in the field of teaching English as a second language. Even if we were to consider the petitioner's occupational training materials, and we reiterate that the petitioner has not established that the ability to compile such materials predicts an ability to develop a successful curriculum for teaching English as a second language, the record contains no evidence that these materials were successful and influential in the clothing manufacturing industry. Other that a few months spent teaching and providing local benefits at those schools, the record contains no evidence of the petitioner's influence in the field of developing training materials. Ultimately, the petitioner seeks a waiver of the alien employment certification based on no documented past achievements and proposes benefits that are, thus, entirely speculative. Speculation as to future benefit without a prior track record of success cannot serve as a basis for a waiver of the alien employment certification. *Id.* at 219.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.